

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 345 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

J

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

-----  
STATE OF GUJARAT

Versus

GANESHBHAI CHAMNAJI RAVAL

-----  
Appearance:

Shri S.R. Divetia, ADDL. PUBLIC PROSECUTOR  
for the appellant.

Respondent No. 1 (original accused No.1) served.

Shri R.N. Shah, Advocate, for respondent No.2  
(original accused No.2).

-----  
CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, at Radhanpur on 14th March, 1989 in Criminal Case No.265 of 1988 is under challenge in this appeal by leave of this Court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby, the learned trial Magistrate acquitted the respondents herein of the offence punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

The facts giving rise to this appeal move in a narrow compass. The Food Inspector of the District of Banaskantha went to one Sarvottam Restaurant at Radhanpur at about 12.00 noon on 18th January, 1988. Respondent-accused No.1 was in charge of the restaurant, presumably as a servant, and respondent-accused No.2 was its owner. The Food Inspector, in presence of two panch witnesses, purchased from respondent-accused No.1 a sample of curd to the tune of 600 gms. The former divided the sample into three parts and in each part he added formalin of the required strength to the tune of 16 drops each. Each part of the sample was separately packed and sealed in a container. One container was sent to the Public Analyst at Baroda for analysis and report. The other two containers were sent to the local health authority, for safe custody. The report of the Public Analyst showed the sample to be adulterated. Thereupon, after obtaining the consent of the local health authority as required under Section 20 of the Act, the Food Inspector filed his complaint in the Court of the Judicial Magistrate, First Class, at Radhanpur on 5th April, 1988, charging the respondents-accused with the offence punishable under Section 16 read with Section 7 thereof. It came to be registered as Criminal Case No.265 of 1988. Thereafter, the local health authority sent to the respondents-accused the intimation regarding launching of the prosecution, together with the report of the Public Analyst, by his letter of 21st of April, 1988. That was received by the respondents-accused on 28th April, 1988. They thereafter applied to the Court on 5th May, 1988 for sending one sample to the Central Food Laboratory for its analysis and report in exercise of their right under Section 13(2) of the Act. It appears that one container of sample was sent by the Court to the Central Food Laboratory at Gaziabad on or about 27th May, 1988. The Central Food Laboratory at Gaziabad gave its report on 30th June, 1988 with its opinion that the sample was found adulterated. Thereafter, the charge against the respondents-accused was framed on 6th September, 1988. Neither respondent-accused pleaded

guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each respondent-accused under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 14th March, 1988 in Criminal Case No.265 of 1988, the learned Judicial Magistrate, First Class, at Radhanpur, acquitted the respondents-accused of the charge levelled against them. That aggrieved the prosecution. The State of Gujarat has thereupon preferred this appeal after obtaining leave of this Court under Section 378 of the Code for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

Learned Additional Public Prosecutor Shri Divetia for the appellant has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was in error in acquitting the respondents-accused of the offence with which they were charged merely on a technical ground. According to learned Additional Public Prosecutor Shri Divetia for the appellant, the learned trial Magistrate ought to have convicted and sentenced the respondents accused as their guilt was proved by the Prosecution beyond any reasonable doubt. As against this, learned Advocate Shri R.N. Shah for respondent-accused No.2 has submitted that there was inordinate delay on the part of the complainant in launching the prosecution and again inordinate delay on the part of the local health authority in giving intimation of launching the prosecution together with the report of the Public Analyst which caused great prejudice to the respondents-accused in as much as they could exercise their right of getting the sample analysed by the Central Food Laboratory when the sample of curd might not have remained fit for analysis. Relying on the binding ruling of the Supreme Court in the case of Municipal Corporation of Delhi v. Ghisa Ram , reported in AIR 1967 SC 970, learned Advocate Shri Shah for respondent-accused No.2 has submitted that the sample of curd would remain fit for analysis after adding preservative only for four months if kept in a room temperature and only for six months if kept in a refrigerator. In the instant case, runs the submission of learned Advocate Shri Shah for respondent-accused No.2, no evidence is led as to whether or not the sample was kept in a refrigerator by or on behalf of the local health authority after the two containers of sample were entrusted to him by the Food Inspector. In that view of the matter, according to learned Advocate Shri Shah for respondent-accused No.2, the sample might not have remained fit for analysis and, in absence of examination

by the Analyst of the Central Food Laboratory at Gaziabad, it ought to be presumed that the sample was not fit for analysis. Relying on this factual position, it has been urged by learned Advocate Shri Shah for respondent-accused No.2 that the respondents-accused have rightly been acquitted by the learned trial Magistrate.

Learned Additional Public Prosecutor Shri Divetia for the appellant-State is right in his submission to the effect that the learned trial Magistrate has found in favour of the prosecution on all points regarding collection of the sample and sending one container of sample to the Public Analyst for its analysis and report. There is, however, no evidence on record to show or to suggest that the remaining two containers of sample were kept in a refrigerator by or in the office of the local health authority after they were handed over by the Food Inspector in that office.

It may be noted at this stage that the Public Analyst at Vadodara signed his report on 3rd February, 1988. Its copy is at Exhibit 27 on the record of the case. It appears to have been forwarded to the complainant sometime on 17th February, 1988. It appears that the complainant Food Inspector moved the local health authority sometime on 22nd February, 1988 for grant of consent to prosecute the respondents-accused. A copy of his communication in that regard is at Exhibit 28 on the record of the case. It appears that the local health authority granted the necessary consent for prosecution on 24th February, 1988, but the order in that regard was issued on 1st March, 1988. Its copy is at Exhibit 29 on the record of the case. The complaint thereafter came to be lodged nearly five weeks thereafter on 5th April, 1988.

It would be necessary at this stage to look at Rule 9-A of the Prevention of Food Adulteration Rules, 1955 (Rules for convenience), which requires the local health authority to forward within a period of 10 days after the institution of prosecution a copy of the report of the result of analysis by the Public Analyst to the person from whom the sample of the article was taken by the Food Inspector. As pointed out hereinabove, the prosecution was launched on 5th April, 1988. A copy of the report of the Public Analyst was sent to the respondents-accused on 21st April, 1988 by means of the communication at Exhibit 30 on the record of the case. It transpires from the material on record that it was received by the respondents-accused on 28th April, 1988. It thus becomes clear that the report of the analysis by

the Public Analyst of the sample purchased from respondent-accused No.1 from the restaurant belonging to respondent-accused No.2 was sent 16 days after launching the prosecution and it was received by the respondents-accused nearly 23 days after launching of the prosecution against them.

In its ruling in the case of *Tulsiram v. State of Madhya Pradesh*, reported in AIR 1985 SC 299, Rule 9-A, prior to its amendment, was held to be directory and not mandatory. In that case, it was held that non-compliance thereof would not vitiate the prosecution unless prejudice was caused to the accused thereby.

Even at the cost of repetition, it may be reiterated that the article of food purchased from the restaurant of respondent-accused No.2 was curd. In its aforesaid binding ruling of the Supreme Court in the case of *Ghisra Ram (supra)*, the Apex Court has taken into consideration the expert's evidence for coming to the conclusion that the sample of curd, without addition of any preservative, would remain fit for analysis for some ten days if kept in a room temperature and for four weeks if kept in a refrigerator and, if a preservative is added to such sample, it would remain fit for analysis for four months if kept in a room temperature and for six months if kept in a refrigerator. Even at the cost of repetition, it may be reiterated that there is nothing on record to show or to suggest that the two sample containers handed over in the office of the local health authority by the complainant-Food Inspector were kept in a refrigerator by or in the office of that authority. In absence of any such evidence, an inference will have to be drawn to the effect that the sample containers in the office of the local health authority were kept in a room temperature and not in a refrigerator. In that view of the matter, the sample would no longer remain fit for analysis after four months in view of the aforesaid binding ruling of the Supreme Court in the case of *Ghisra Ram (supra)*.

As rightly submitted by learned Additional Public Prosecutor Shri Divetia for the appellant-State, the Central Food Laboratory in its certificate at Exhibit 31 has clearly indicated that the sample was in a condition fit for analysis. It transpires therefrom that the sample was received by the Central Food Laboratory on 9th June, 1988. It was taken by the Food Inspector on 18th January, 1988. It thus becomes clear that it was received in the Central Food Laboratory more than four months after its purchase by the Food Inspector from

respondent-accused No.1 from the restaurant belonging to respondent-accused No.2. In view of the aforesaid binding ruling of the Supreme Court in the case of Ghisa Ram (*supra*), that sample would not have remained fit for analysis. If in the report at Exhibit 31, the sample was found to be in a condition fit for analysis, it was an extraordinary circumstance, and as such it was necessary for the prosecution to have examined the analyst from the Central Food Laboratory to prove that it remained in a condition fit for analysis even after expiry of four months from the date of its purchase by the Food Inspector on 18th January, 1988. No analyst from the Central Food Laboratory at Gaziabad has been examined in this case to prove that the sample received by it was in a condition fit for analysis though more than four months had elapsed from the date of its collection on 18th January, 1988. In that view of the matter, an inference will have to be drawn to the effect that the sample received in the Central Food Laboratory on 9th June, 1988 was not in a condition fit for analysis in view of the aforesaid binding ruling of the Supreme Court in the case of Ghisa Ram (*supra*).

It cannot be gainsaid that Section 13(2) of the Act confers a very valuable right on the seller of an article of food to get the sample analysed by the Central Food Laboratory while it is in a condition fit for such analysis. If there is delay in prosecution and further delay in giving a copy of the report of the Public Analyst, the seller of the article of food in question would not be in a position to exercise his valuable right under Section 13(2) of the Act in an effective manner. In the case of a sample of curd, it loses its condition of fitness for analysis after expiry of four months even if preservative is added if it is kept in a room temperature. Any attempt to send it to the Central Food Laboratory for its analysis in exercise of the right conferred upon the seller under Section 13(2) of the Act thereafter would prove redundant. It will be an exercise in futility as the sample of curd would no longer remain in a condition fit for its analysis in view of the aforesaid binding ruling of the Supreme Court in the case of Ghisa Ram (*supra*).

As pointed out hereinabove, the prosecution was launched on 5th April, 1988, nearly two and half months after recovery of the sample from the respondents-accused. The report of the Public Analyst was received by the respondents-accused on 28th April, 1988, a little more than three months after recovery of the sample. It was received by the Central Food

Laboratory at Gaziabad for its analysis on 9th June, 1988 as transpiring from its report at Exhibit 31 on the record of the case, a little more than four and half months from the date of its collection. It would be doubtful that it was in a condition fit for analysis in view of the aforesaid binding ruling of the Supreme Court in the case of Ghisa Ram (*supra*). According to well-settled principles of law, the benefit of doubt should always operate in favour of the accused.

In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of the learned trial Magistrate calls for no interference by this Court in this appeal though on a different reasoning.

In the result, this appeal fails. It is hereby dismissed.

\*\*\*\*\*

(apj)